

**ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE
CITY OF COLLEGE STATION, BRYAN/COLLEGE STATION
ECONOMIC DEVELOPMENT CORPORATION
AND LYNNTech, INC.**

This Agreement is entered into by and between the CITY OF COLLEGE STATION, TEXAS, a home-rule municipal corporation organized under the laws of Texas (hereinafter referred to as "CITY"), the BRYAN/COLLEGE STATION ECONOMIC DEVELOPMENT CORPORATION, a Texas non-profit corporation (hereinafter referred to as "EDC") and LYNNTech, INC., a Texas Corporation, and its affiliates, including, but not limited to, Lynntech Industries, Ltd. (hereinafter referred to as "OWNER").

WHEREAS, the CITY is authorized and empowered under applicable Texas law to aid in the development of industrial enterprises within the geographic boundaries of the CITY by offering economic and other incentives to prospective new, developing, and expanding businesses; and

WHEREAS, the CITY actively seeks economic development prospects in College Station through its participation in the EDC, its membership in the EDC, and its establishment of an Economic Development Office in College Station; and

WHEREAS, OWNER is involved in research and development of fuel cell technology and other related technologies; and

WHEREAS, OWNER has expressed its intent and desire to locate within the Corporate limits of the City of College Station; and

WHEREAS, CITY provides cash incentives for use in attracting new business and expanding businesses to and within the CITY that are qualified economic development prospects under its Economic Development Policy; and

WHEREAS, CITY and EDC consider OWNER to be a qualified economic development prospect that will create new jobs in the community;

NOW, THEREFORE, for and in consideration of the premises and mutual covenants and promises hereinafter set forth, the Parties represent and agree as follows:

1. Definitions

For the purposes of this Agreement, when not inconsistent with the context, words, used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. Words not defined in this Agreement shall be given their common and ordinary meaning.

1.1. **Business Facility** – The premises leased by OWNER. The total amount of space to be leased by OWNER will be no less than 18,000 sq. ft on or before December 31, 2002. The address of said premises is 1313 Research Parkway, College Station, TX in the Texas A&M University Research Park.

1.2 **Cessation of operations** means any unauthorized assignment pursuant to Section 12 herein; vacating the premises prior to the end of a lease term; abandoning the lease; an uncured default; any termination of the lease by Texas A&M University.

1.3 **Economic Incentives** – a one-time \$50,000.00 cash payment.

1.4. **Execution Date** - the latest date set forth on pages 10 and 11 just above the signature lines.

1.5. **Full-time Employees** means any employee (excluding temporary or seasonal employees) on the payroll in a budgeted position and having an officially scheduled workweek forty (40) hours or more that according to company policy is entitled to full benefits.

1.6. **Part-time Employees** means any employee (excluding temporary or seasonal employees) on the payroll in a budgeted position and having an officially scheduled workweek of less than forty (40) hours.

1.7. **New Gross Payroll** - The total of new full-time employee payroll and part-time employee payroll, as described and defined in Section 3.2.1 hereinbelow.

1.8. **Gross Payroll** means the number that OWNER reports to the Texas Workforce Commission on a quarterly basis.

2. **CITY's Incentive Package, Obligations and Representations**

2.1. **Cash Incentives**

CITY agrees to make a one-time \$50,000.00 lump sum cash payment to the EDC for the purpose of providing cash incentive payments for costs associated with the finish out of the Business Facility to OWNER by the EDC upon OWNER's occupancy of the leased premises and operation of its Business Facility.

3. **OWNER's Obligations and Representations**

3.1. OWNER agrees to operate its Business Facility in the corporate limits of the City of College Station and to operate its Business Facility to research and develop fuel cell technology and other technology related products.

3.2. Employment and Job Creation

3.2.1. OWNER agrees and represents that it will create new and additional gross payroll in the amounts and on or before the dates according to the below-listed schedule:

End of Year Dec. 31	New Full Time Jobs	New Part Time Jobs	New Annual Gross Payroll	Existing Full Time Jobs	Existing Part Time Jobs	Total Employment	Gross Payroll
2001				67	39	106	\$3,800,000
2002	0	0	\$0			106	\$3,800,000
2003	2	4	\$216,000			112	\$4,016,000
2004	2	3	\$180,000			117	\$4,196,000
2005	2	4	\$216,000			123	\$4,412,000
2006	2	4	\$216,000			129	\$4,628,000
2007	2	4	\$216,000			135	\$4,844,000
2008	2	4	\$360,000			141	\$5,204,000
2009	4	6	\$360,000			151	\$5,564,000
TOTAL	16	29	\$1,764,000	67	39	151	\$5,564,000

3.2.2. OWNER represents that the new jobs created will be salaried and hourly at a minimum average rate of \$36,000 per job per year.

3.2.3. OWNER's number of employees as of December 31, 2001 is 106 (including 39 part time), and payroll is \$3,800,000.00. OWNER'S new employees and payroll specified in 3.2.1 hereinabove is in addition to these existing figures.

3.2.4 OWNER's gross payroll, will increase by a cumulative total of \$1,764,000.00 commencing, July 25, 2002 and continue to increase over Owner's current gross payroll throughout the term of this Agreement, in accordance with the above schedule.

3.2.5 If OWNER exceeds any of the projected benchmarks, OWNER shall receive a credit for same, which shall carry forward as a credit to the next benchmark.

4. Term

4.1 The term of this Agreement is from the date of execution of this Agreement through December 31, 2009.

5. Reporting Requirements

5.1. Reports

5.1.1 OWNER shall submit to the CITY and Economic Development Corporation, on a quarterly and cumulatively on an annual basis, the information or

reports necessary for the monitoring of the performance criteria established in this Agreement. The submission of these reports shall be the responsibility and at the sole expense of OWNER. The cumulative annual submission shall be verified by a Certified Public Accountant or in-house accountant and an officer of the OWNER as applicable. The quarterly reports shall be verified by an officer of the OWNER.

5.1.2 OWNER shall execute the attached Texas Workforce Commission report release form attached as Exhibit A and authorize the City or, if designated by the City the EDC, to submit the form to the Commission in order to request the release of any information that has been filed or is required to be filed with the Commission during the term of Agreement.

5.2. Confidentially

5.2.1 Because of the highly competitive nature of the industry in which OWNER does business, CITY and EDC agree that the reports which OWNER may be required to submit may contain information which OWNER considers to be valuable proprietary information. As such, CITY and EDC agree to keep any and all reports provided by OWNER as confidential information to the extent the documents are not public information under SECTION 552 OF THE PUBLIC INFORMATION ACT, TEXAS GOVERNMENT CODE, as amended.

6. Notice of Intent to Cease Operation

6.1 If OWNER ceases or intends to cease operation of its business in the City of College Station during the term of this Agreement, OWNER shall give thirty (30) days prior written notice to CITY. Failure to provide such notice shall constitute an event of default pursuant to Section 8.

7. Compliance with Applicable Laws

7.1 At all times during which OWNER owns and operates the Business Facility, OWNER will remain in compliance with all applicable laws, rules and regulations including without limitation, all applicable environmental laws, rules and regulations.

8. New Gross Payroll Default

8.1 If OWNER's payroll figures fall below the required level during a reporting period, OWNER shall immediately notify CITY of same in writing and cure said default within thirty (30) calendar days from the date of default unless extended pursuant to Section 9.2. OWNER's failure to notify the CITY of any default shall waive the cure period and the CITY may exercise any of its remedies pursuant to Section 9.

8.2 If OWNER fails to remit payment to CITY, all unearned incentives will be due and owing and City may terminate this Agreement and pursue its remedies provided herein or any other remedies at law. If OWNER notifies CITY of its default, and the CITY requires repayment pursuant to the formula in Section 9.2.2, then any such payment will be due and owing within thirty (30) days of the date of CITY's determination. A failure to repay any prorated amount during the thirty (30) day time prescribed constitutes a default subject to the default remedies in Section 9 herein.

9. **Default**

9.1. **Events of Default**

The following are expressly established as "Events of Default":

- (a) OWNER's cessation of operations as defined herein.
- (b) (i) Filing of an application by OWNER for a consent to the appointment of a receiver, trustee or liquidator of its business or all of its assets; (ii) the filing by OWNER of a voluntary petition in bankruptcy or the filing of a pleading in any court of record admitting in writing its inability to pay its debts as they come due; (iii) the making by OWNER of a general assignment for the benefit of creditors; (iv) the filing by OWNER of an answer admitting the material allegations of or its consenting to, or default in answering, a petition filed against it in any bankruptcy proceeding.
- (c) The entry of an order, judgment or decree by any court of competent jurisdiction, adjudicating OWNER a bankrupt, or appointing a receiver, trustee or liquidator of its business or all its assets, and such order, judgment or decree continuing unstayed and in effect for any period of sixty (60) consecutive days.
- (d) OWNER's failure to perform any of the other covenants, conditions, and agreements of this Agreement and the continuance of such failure after notice in writing from CITY and the expiration of any cure period, if any.
- (e) OWNER's failure to meet or maintain the Payroll requirements set forth in Section 3 herein during the term of this Agreement.
- (f) OWNERs' failure to provide quarterly or annual reports as provided in Section 5 herein.
- (g) Any unauthorized assignment.
- (h) OWNER's failure to notify City and EDC of a payroll default or assignment
- (i) Owner's failure to remit any repayment or payment when due.

9.2 Remedies In Case Of Default.

9.2.1 CITY at its sole option may treat any one or more of the Events of Default defined in Section 9.1 or a failure to comply with any other term or condition of this Agreement as a breach of this Agreement. Upon serving written notice by certified mail on the defaulting party at the last known address CITY will have one or more of the following remedies:

- (a) The CITY may terminate this Agreement, and/or
- (b) CITY may, at CITY's sole option, require OWNER to repay all or any portion of the grant.

9.2.2 Where City requires a prorated repayment the following formula shall be used:

Proration formula

Total New Payroll minus Actual New Payroll divided by Total New Payroll = % of default multiplied by incentive for the year of default
= amount of repayment.

PRORATION FORMULA EXAMPLE
Total New Payroll (December 31, 2004): \$180,000
Actual New Payroll (December 31, 2004): \$90,000
\$180,000-90,000 = \$90,000
\$90,000 divided by \$180,000 = .50 or 50%
50% multiplied by the 2004 prorated incentive of \$7,142.86 for the year in default = amount of payment = \$3,571.43

9.2.3 CITY shall notify the OWNER in writing of its default (with a copy to all the EDC) and, except where waived by the OWNER, the OWNER shall have thirty (30) calendar days, after receipt of such written notice, to cure any default, subject to additional time to cure provided herein. In the event of a default on the amount of payroll, the cure period may be extended to up to an additional sixty (60) days for a total maximum extension of the cure period to ninety (90) days upon written request by OWNER and written approval by the City Manager upon submission of reasonable evidence substantiating a lack of available workers and/or unexpected employee turnover and that the OWNER is exercising due diligence to hire the number of employees necessary to comply with this Agreement. If OWNER fails to timely cure its default, CITY may, at its sole option, terminate this Agreement and OWNER shall repay all unearned incentives to City.

9.2.4 CITY and/or EDC Default

In the event that CITY and/or EDC materially breaches any of its obligations and responsibilities under this Agreement, OWNER, at its option, may terminate this Agreement, or pursue its remedies available at law or in equity.

10. Indemnity

10.1 OWNER agrees to and shall indemnify and hold harmless and defend CITY, its officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all reasonable expenses of litigation, court costs, and reasonable attorney's fees, for injury to or death of any person, for damage to any property, for any breach of contract, or its failure to abide by all applicable environmental laws, rules and regulations arising out of or in connection with this Economic Development Agreement, and OWNER's operation and construction of its improvements on the Business Facility.

11. Release

11.1 OWNER releases, relinquishes and discharges the CITY, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to or death of, any person (whether they be either of the parties hereto, their employees or other third parties) and any loss of or damage to property (whether property of either of the parties hereto, their employees, or of third parties) or its failure to abide by all applicable environmental laws, rules and regulations that is caused by, arising out of, or in connection with this development agreement .

12. Assignment

12.1 OWNER may not assign this Agreement without the prior written consent of CITY and EDC. Additionally, a change in ownership, in a single transaction, of fifty plus one percent of the stock of OWNER shall be considered an assignment for purposes of this paragraph.

13. Invalidity

13.1 If any provision of this Agreement shall be held to be invalid, illegal or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.

14. Written Notice

14.1 All notices required by this Agreement (i) shall be in writing, (ii) shall be addressed to the parties as set forth below unless notified in writing of a change in

address, and (iii) shall be deemed to have been delivered either when personally delivered or, if sent by mail, in which event it shall be sent by registered or certified mail, return receipt requested, three (3) business days after mailing. The addresses of the parties are as follows:

To OWNER: Lynntech, Inc.
7610 Eastmark Drive, Suite 105
College Station, Texas 77840
Attn: Oliver Murphy

To CITY: City of College Station
P.O. Box 9960
College Station, Texas 77842
Attn: City Manager

To EDC: Bryan/College Station Economic Development Corp.
4001 East 29th Street, Suite 180
Bryan, Texas 77802
Attn: Chairman

15. Entire Agreement

15.1 It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings, written or oral, between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent or employee of the CITY, either before or after the execution of this Agreement, shall affect or modify any of the terms or obligations hereunder.

16. Amendment

16.1 No amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of OWNER, CITY, and the EDC.

17. Texas Law

17.1 This Agreement has been made under and shall be governed by the laws of the State of Texas.

18. Place of Performance

18.1 Performance and all matters related thereto shall be in Brazos County, Texas, United States of America.

19. **Authority to Enter Contract**

19.1 Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective corporations

20. **Waiver**

20.1 Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of the party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

21. **Representation**

21.1 OWNER represents and warrants that no member of the College Station City Council, the Brazos County Commissioners Court or County Judge has an interest in the Property, and that the same are not owned or leased by any member of the College Station City Council, the Brazos County Commissioners Court or County Judge. OWNER further represents and warrants that no member of the College Station City Council is under contract either directly or indirectly with OWNER, Owners agent's, contractors or subcontractors. This representation and warranty shall be in effect for the full term of this Agreement.

EXECUTED this 10th day of July, 2002.

LYNNTECH, INC.

CITY OF COLLEGE STATION, TEXAS

BY: Oliver J. Murphy
OLIVER J. MURPHY, President
Date: _____

BY: _____
RON SILVIA, Mayor
Date: _____

BY: G. Duncan Hitchens
G. DUNCAN HITCHENS,
Vice-President
Date: _____

ATTEST:

CONNIE HOOKS, City Secretary

APPROVED:

THOMAS E. BRYMER, City Manager
Date: _____

CHARLES CRYAN
Director of Fiscal Services
Date: _____

City Attorney
Date: _____

KIM FOUTZ
Director of Economic Development
Date: _____

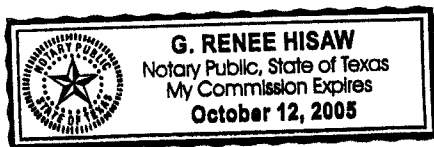
THE STATE OF TEXAS
COUNTY OF BRAZOS

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CORPORATE ACKNOWLEDGMENT

Before me, the undersigned authority, on this day personally appeared Oliver J. Murphy, President of LYNNTech, INC., a Texas Corporation, and known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this the 10th day of July, 2002.



G. Renee Hisaw
Notary Public, State of Texas

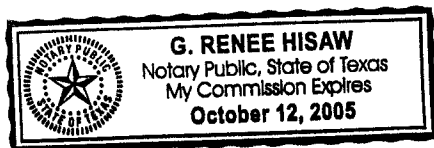
THE STATE OF TEXAS
COUNTY OF BRAZOS

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CORPORATE ACKNOWLEDGMENT

Before me, the undersigned authority, on this day personally appeared G. Duncan Hitchens, Vice-President of LYNNTech, INC., a Texas Corporation, and known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this the 10th day of July, 2002.



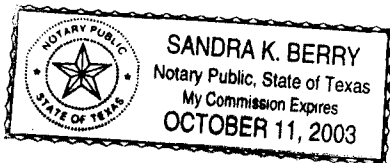
G. Renee Hisaw
Notary Public, State of Texas

THE STATE OF TEXAS §
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COUNTY OF BRAZOS §

ACKNOWLEDGMENT

Before me, the undersigned authority, on this day personally appeared Tim Bryan as CHAIRMAN of the BRYAN/COLLEGE STATION ECONOMIC DEVELOPMENT CORPORATION, a Texas Non-profit Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this the 11 day of July, 2002.



Sandra K. Berry
Notary Public, State of Texas

THE STATE OF TEXAS §
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COUNTY OF BRAZOS §

ACKNOWLEDGMENT

Before me, the undersigned authority, on this day personally appeared Ron Silvia, as Mayor of the CITY OF COLLEGE STATION, a Texas home rule municipal corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this the ____ day of _____, 2002.

Notary Public, State of Texas